

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 JENNIFER ALLAN, )  
12 Plaintiff, ) NO. CV S-01-2231 GEB GGH  
13 v. )  
14 CITY OF MARYSVILLE, et al., )  
15 Defendants. )  
\_\_\_\_\_  
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17 On June 16, 2005, Defendants City of Marysville, Michael E.  
18 Boyd, Leonard H. Cummings, Chris S. Sachs, Michael Stout, Curt Snyder,  
19 and Gary P. Cummings (collectively referenced as "Defendants") filed  
20 an application for reconsideration of the Order filed June 13, 2005,  
21 which denied their motions for attorney's fees and for excess fees and  
22 costs.

23 Defendants argue that clear error was committed in the June  
24 13 Order since the Order failed to separately rule on each Defendant's  
25 request for attorney's fees, and did not show recognition of defense  
26 counsel's isolated work involved with defending 14 separate parties.  
27 Defendants' request for reconsideration is granted.  
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1 "A defendant may recover § 1988 attorney fees only if 'the  
2 plaintiff's action was frivolous, unreasonable, or without foundation,  
3 even though not brought in subjective bad faith.'" Saman v. Robbins,  
4 173 F.3d 1150, 1157 (9th Cir. 1999) (citation omitted). The isolated  
5 work involved with Defendants' respective motions is addressed below  
6 in the same alphabetical order that the work is discussed in the  
7 declaration of defense counsel Franklin G. Gumpert. (See Decl. of  
8 Franklin G. Gumpert, at 7-9.)

9 (A) This portion of the motion is denied. This claim was  
10 not frivolous since it was supported by Plaintiff's medical expert.

11 (B) This portion of the motion is granted since Gary  
12 Cummings should not have been included as a Defendant.<sup>1</sup>

13 (C) This portion of the motion is granted since the City of  
14 Marysville and Michael Boyd should not have been included as  
15 Defendants.

16 (D) This portion of the motion is denied. Even though  
17 Plaintiff did not prevail against Defendant Chris Sachs at trial, in  
18 light of Plaintiff's theory of liability and the factual contentions  
19 she proffered, her claim against Sachs was not so totally devoid of  
20 merit that it could be termed frivolous, unreasonable, or without  
21 foundation.

22 (E) This portion of the motion is denied for the reason  
23 stated above in Section D.

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26 <sup>1</sup> Although the billing entries constitute block billing, which  
27 creates an impediment to the analysis of the reasonableness of the  
28 billing entries, sufficient information is provided. Fischer v. SJB-P.  
Inc., 214 F.3d 1115, 1121 (9th Cir. 2000) (finding sufficient a  
summary of the time spent on a broad category of tasks).

1 (F) This portion of the motion is denied for the reason  
2 stated above in Section D.

3 (G) This portion of the motion is granted since those  
4 claims should not have been pursued.

5 (H) This portion of the motion is granted for the reason  
6 stated above in Section G.

7 (I) This portion of the motion is granted for the reason  
8 stated above in Section G.

9 (J) This portion of the motion is granted for the reason  
10 stated above in Section G.

11 (K) This portion of the motion is granted since that claim  
12 should not have been pursued.

13 (L) This portion of the motion is denied since it is  
14 unclear why the stated amount of time was expended on the referenced  
15 tasks. The trial court need not accept "uncritically" defense  
16 counsel's "representation concerning the time expended." Frank Music  
17 Corp. v. Metro-Goldwyn-Mayer, Inc., 886 F.2d 1545, 1557 (9th Cir.  
18 1989).

19 (M) This portion of the motion is denied since it is  
20 unclear why it took defense counsel 20.3 hours to do the referenced  
21 tasks.

22 (N) This portion of the motion is granted in part. This  
23 portion of the motion appears to request fees for preparing the  
24 motion, even though a substantial portion of the motion seeks  
25 sanctions against Plaintiff which will not be imposed. Since  
26 Defendants are not prevailing parties on the sanctions request, the  
27 amount of fees requested in this portion of the motion is reduced by  
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1 \$2,000.00, which is assumed to eliminate the sanctions portion of the  
2 motion from the fee request.

3 Defendants also argue they are entitled to excess fees and  
4 costs under 28 U.S.C. § 1927. (Defs.' Mot. for Att'ys Fees and for  
5 Excessive Fees and Costs at 19.) However, because Defendants' request  
6 for sanctions is denied, Defendants' request for excess fees and costs  
7 is also denied.

8 For the stated reasons, Defendants are awarded \$31,547.50 in  
9 attorney's fees.

10 IT IS SO ORDERED.

11 Dated: June 22, 2005

12 /s/ Garland E. Burrell, Jr.  
13 GARLAND E. BURRELL, JR.  
14 United States District Judge

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